

Submitted into minutes 10/07/10
By Patty Bentley

Fw: Reply

James Short

Sent: Wednesday, October 06, 2010 9:07 PM**To:** Leisa Boise; Tracy Rotz; clay.morris@verizon.net; Fred Wachtmeister; Brian Herkalo; Stephen Krieg; Steven Sullivan; Patricia Bentley; Mary Huckeba; Jay Lebrun; queent@primelink1.net

Board Members

FYI - see Joe's e-mail below and my response. The response was mainly derived from the tenor of Board comments during the last two meetings.

Jake

----- Original Message -----

From: James Short

To: 'jlotemplio@pressrepublican.com' <jlotemplio@pressrepublican.com>

Sent: Wed Oct 06 21:02:08 2010

Subject: Reply

Hey Jake,

The city common council is voting tomorrow night on a resolution formally opposing the 3-percent utility tax that the school board is considering. I am doing a story on the vote and would like to know if you think the city's actions will have any affect on the school district's decision. Thanks

Joe LoTempio

Staff Writer

Joe,

It is my belief that local governments owe one another the professional courtesy of not commenting on matters which are outside of their scope of responsibility. Public school districts in New York State are the most accountable and transparent form of government. In addition to being led by an elected Board of Education, school budgets are offered for public consideration each and every year... and no other tier of government can claim this level of accountability to the electorate. In keeping, the Plattsburgh City School Board of Education has scheduled a public hearing on the matter of a utility tax. No action on this matter is currently before the Board of Education, and I'm frankly surprised that the holding of a public hearing - an action which so fundamentally respects democratic principles by soliciting voters' input - could be criticized by anyone who claims to support the best interest of 'the people'. I would submit that the time for the formation and expression of opinions is AFTER the public receives information and has a chance to share opinions. To comment on topics which are beyond one's purview, and to do so prior to the process of public consultation, smacks of pandering.

Following the sharing of information and opinion at the utility tax public hearing, the Board of Education may - or may not - choose to further pursue this matter. The recent articles and opinion pieces on this matter, many of which frankly are fraught with inaccuracies, errors, and misrepresentations, have only served to reinforce my belief that information and comprehension should precede the forming of opinions.

I am proud of the history of civility and respect which has surrounded public school governance - both in the Plattsburgh City School District and elsewhere. Where it is commonplace for other public election processes to devolve into nasty ,

petty, sensational affairs, I have always found school board elections to be amicable and governed by a mutual interest in serving the students. By design, the utility tax public hearing was scheduled after the conclusion of this fall's elections. This timing was driven by the Board's desire to have the public input which it has so actively solicited not be clouded by ongoing political campaigns and the resultant partisanship and self-interest which are inherent thereto.

Jake Short

COMMERCIAL GUARANTY

For good and valuable consideration, REX JACOBSMA ("Guarantor") absolutely and unconditionally guarantees and promises to pay to The City of Plattsburgh ("Lender") or its order, in legal tender of the United States of America, the Indebtedness (as that term is defined below) on the terms and conditions set forth in this Guaranty.

1. DEFINITIONS. The following words shall have the following meanings when used in this Guaranty.
 - a) Borrower. The Borrower" means Main Mill Investments LLC, a _____ Limited Liability Company whose address is 32 Power Dam Way, Plattsburgh, NY 12901
 - b) Guarantor. The word "Guarantor" means REX JACOBSMA whose address is Jacobsma & Associates, P.O. Box 1833, Paso Robles, CA 93447
 - c) Guaranty. The word "Guaranty" means this Guaranty made by Guarantor for the benefit of Lender.
 - d) Indebtedness. The word "Indebtedness" shall mean all money, costs, damages and expenses the Lender may become liable to pay the New York State Urban Development Corporation dba Empire State Development Corporation ("ESD") in the event of a default under a Grant Disbursement Agreement between the Lender and ESD which is dated _____, 2010, a copy of which is annexed hereto as exhibit A.
 - e) Lender. The word "Lender" means the CITY OF PLATTSBURGH, its successors and assigns.

2. RELATIONSHIP BETWEEN BORROWER, LENDER AND GUARANTOR. The Guarantor acknowledges that the facts and circumstances underlying this guaranty are as follows. The Guarantor owns a controlling interest in the Borrower. The Lender has received a 2.5 million dollar grant from ESD which is for the sole benefit of the Borrower. The Lender will make a sub grant of the ESD grant funds to the Borrower. The Grant Disbursement Agreement between the Lender and ESD imposes obligations and liabilities on the Lender with respect to the use of grant funds, the completion of the project, the transfer of the Borrower's property and other matters, all of which are set forth in Exhibit A and are collectively referred to herein as the Lender's "Grant Obligations". The Lender has agreed to assume the Grant Obligations on the condition that the Borrower perform and abide by all of the Grant Obligations and that the Guarantor guaranty the Borrower's performance of the Grant Obligations and, in the event of a default, that the Guarantor pay the Indebtedness the Lender is obligated to pay.

3. **MAXIMUM LIABILITY.** The maximum liability of Guarantor under this Guaranty shall not exceed at any one time the sum of the principal amount of \$2,500,000.00 Dollars plus any costs and expenses payable by the Lender to the Empire State Development Corporation, and any attorneys' fees incurred by the Lender in connection with the enforcement of this Guaranty and any Grant Agreement between the Lender and Borrower.
4. **NATURE OF GUARANTY.** Guarantor's liability under this Guaranty shall be open and continuous for so long as this Guaranty remains in force. Guarantor intends to guarantee at all times the performance and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the indebtedness within the limits set forth in the preceding section of this Guaranty.
5. **DURATION OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until the indebtedness shall have been fully and finally paid and satisfied. The Guarantor's obligations under this Guaranty for an unauthorized transfer of all or part of the property comprising the Project shall end upon the expiration of the grant recapture period as set forth in exhibit A.
6. **GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (a) no representation or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (b) this Guaranty is executed at Borrower's request and not at the request of Lender, although the Lender required that the Borrower guaranty the indebtedness; (c) Lender has made no representation to Guarantor as to the creditworthiness of Borrower, (d) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition, (e) Guarantor has a personal net worth consisting of cash, marketable securities and real estate that in the aggregate is more than \$5,000,000 dollars. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

Guarantor acknowledges that Lender has agreed to reimburse the Empire State Development Corporation up to \$2,500,000 dollars if the Borrower sells or transfers its property within 5 years, as set forth in detail in exhibit A, and has made this promise in reliance on confidential financial information provided by the Guarantor to the Lender, which said information shows Guarantor's personal net worth is more than \$5,000,000.00 Dollars.
7. **GUARANTOR'S WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender to (a) make any presentment, protest, demand, or notice of any kind, including notice of change of any terms of repayment of the indebtedness, default by Borrower or any other guarantor or surety, any action or non action taken by Borrower, lender, or any other guarantor or surety of Borrower, or the creation of new or additional

indebtedness; (b) proceed against any person, including Borrower, before proceedings against Guarantor; (c) apply any payments or proceeds received against the indebtedness in any order; (d) give notice of the terms, time, and place of any sale of the collateral pursuant to the Uniform Commercial Code or any other law governing such sale; (e) disclose any information about the indebtedness, the Borrower, the collateral, or any other guarantor or surety, or about any action or non action of Lender; or (f) pursue any remedy or course of action in lender's power whatsoever.

Guarantor also waives any and all rights or defenses arising by reason of (a) any disability or other defense of Borrower, any other guarantor or surety or any other person; (b) the cessation from any cause whatsoever, other than payment in full, of the indebtedness; (c) the application of proceeds of the indebtedness by Borrower for purposes other than the purposes understood and intended by Guarantor and Lender; (d) any act or omission or commission by lender which directly or indirectly results in or contributes to the discharge of Borrower or any other guarantor or surety, or the indebtedness, or the loss or release of any collateral by operation of law or otherwise. Until all indebtedness is paid in full, Guarantor waives all rights and any defenses Guarantor may have arising out of any election of remedies by Lender even though that election of remedies, such as a non judicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against Borrower or any other guarantor or surety.

Guarantor further waives any right to enforce any remedy Lender may have against Borrower or any other guarantor, surety, or other person, and further, Guarantor waives any right to participate in any collateral for the Indebtedness now or hereafter held by Lender.

8. **GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.
9. **MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Guaranty:
 - a) Applicable Law. This Guaranty has been delivered to Lender and accepted by lender in the State of New York. If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of Clinton County, State of New York. Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Guarantor against the other. (Initial Here _____) This Guaranty shall be governed by and construed in accordance with the laws of the State of New York.
 - b) Notices. All notices required to be given by either party to the other under this Guaranty shall be in writing and shall be effective when actually delivered or when deposited with a nationally recognized overnight courier, or when deposited in the United States mail, first class postage prepaid, addressed to the party to whom the notice is to be given at the address shown above or to such other addresses as either

party may designate to the other in writing. If there is more than one Guarantor, notice to any Guarantor will constitute notice to all Guarantors. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address.

- c) Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require: and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them.
 - d) Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this guaranty.
 - e) Severability. If a court of competent jurisdiction finds any provision of this Guaranty to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, and all provisions of this Guaranty in all other respects shall remain valid and enforceable.
 - f) Authority. If any one or more of Borrower or Guarantor are corporations or partnerships, it is not necessary for lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, or agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.
 - g) Waiver. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of delaying between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole reasonable discretion of Lender.
10. EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF

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Exhibit A

Grant Disbursement Agreement consisting of __ pages with attachments.

EXHIBIT B: RECAPTURE TERMS

If the Grantee is not the owner of the Project, then the Grantee shall prohibit, for five full calendar years from the date of the initial disbursement of Grant funds (the "Restricted Period"), any transfer of the Project in whole or in part, by sale, lease, or conveyance of any interest in or with respect to the Project except (a) transfers of minor interests in the Project site, such as utility easements and limited rights-of-way, and (b) (i) the arms-length basis sale or lease of individual condominium units in the ordinary course of business for a condominium development and (ii) the arms-length basis residential or commercial lease in the ordinary course of business for a commercial, residential, or mixed-use rental development. During the Restricted Period, the Grantee shall provide to ESDC annually, on or before February 1st of each full calendar year following the disbursement of the Grant, a written certification of the name, address and contact information for the owner of the Project Location(s) (verified by the Grantee by examination of the official title record for the "Project Location(s)) as of the immediately preceding January 1 and whether the ownership of the Project has changed since the date of the initial disbursement of Grant funds, and if ownership has changed, the name, address and contact information for the new owner. In the event that such a prohibited transfer occurs within such five-year period, the Grantee shall pay to ESDC, promptly upon ESDC's written demand therefore, the applicable amount (the "Recapture Amount") indicated below.

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the transfer occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the transfer occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the transfer Occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the transfer occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the transfer occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the transfer Occurred in the fifth full calendar year after the disbursement was made.

Note: "grantee" refers to the City of Plattsburgh, however in the context of this guaranty "grantee" refers to Main Mill Investments LLC .

Since most documents given to the city are public records and subject to disclosure to anyone upon request, we will not require personal financial statements. However, we would like a letter from your accountants addressed to the City Chamberlain opining that they are familiar with your finances and you have a personal net worth in excess of \$5 million (as that term is defined in the guarantee). The letter should be addressed to:

Richard Marks
City Chamberlain
City of Plattsburgh
6 Miller Street
Plattsburgh, New York